IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. Civil Second Appeal No.4 Of 2003

Nathu Lal Vs. Vidhya Bhushan & Others

Date Of Order ::: 21.11.2006.

Hon'ble Mr. Narendra Kumar Jain J.

Mr. Santosh Meena, Advocate for
Mr. S.L. Yadav, Counsel for appellant
Mr. M.M. Ranjan, Counsel for respondents

By the Court :

Heard learned counsel for both the parties.

The plaintiff-respondents filed a suit for eviction in respect of the rented property on the ground of default in making the payment of monthly rent as well as personal bonafide necessity of the plaintiffs. The Lower Court decreed the suit of eviction filed by the plaintiffs on the ground of personal bonafide necessity. So far as the default in making the payment of rent is concerned, the issue was

decided against the plaintiffs. Being aggrieved with the same the defendant filed an appeal challenging the decree of eviction. The plaintiffs filed the cross objections in respect of the finding of the Lower Court in respect of the Issue relating to the default in making the payment of monthly rent. The First Appellate Court affirmed the finding of the Lower court in respect of the personal boanfide necessity. The finding in respect of the default in making the payment of monthly rent was reversed and the decree of eviction was also passed on that basis. The appeal as well as the cross objections were decided accordingly by the First Appellate Court. Being aggrieved with the same, the present second appeal has been preferred by the defendant.

During the pendency of the second appeal, the appellant filed two applications under Order 41 Rule 27 of the C.P.C., dated 26.02.2003 as well as 05.03.2003, which were kept for consideration at the time of admission of the second appeal. Learned counsel for the appellant contended that he has placed on record the copies of the Money Order receipts to show that there was no default in making the payment of rent.

However, he has not shown any cogent reason as to why the said documents annexed with both the applications were not placed on record before the Lower Court. Reasons given by the learned counsel for the appellant are not satisfactory and in these circumstances, I am not inclined to allow both the applications filed under Order 41 Rule 27 of the C.P.C., and the same are hereby rejected.

The decree of eviction has been passed by both the Courts below on the ground of personal bonafide necessity of the rented shop of the plaintiffs. The First Appellate Court has also passed a decree of eviction on the ground of default also.

I have heard the learned counsel for both the parties and after considering their submissions in the light of the finding of both the Courts below, I find that the controversial issues involved in the present case are relating to the question of facts and there is a concurrent finding in respect of personal boanfide necessity by both the Courts below and in respect of default by the First Appellate Court, which cannot be interfered with by this Court in second appeal under Section 100 of the C.P.C.

No substantial question of law is involved in this second appeal and the same is accordingly dismissed at the admission stage itself with no order as to costs.

(Narendra Kumar Jain) J.

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